In the Punjab and Haryana High Court, Chandigarh.

Date of decision:6.9.2007

Daljit Singh ... Appellant

Versus

Bhajan Singh ... Respondent

Present: Mr. KS Dhillon, Advocate, for the appellant.

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PERMOD KOHLI, J. (Oral):

For the reasons recorded in the application, delay of 36 days in re-filing the appeal is condoned. C.M. is allowed.

This Regular Second Appeal is directed against the concurrent findings of fact recorded by the learned Courts below.

In a suit filed by the respondent for possession by way of specific performance of contract, the trial Court found that the agreement in question was, in fact, a loan transaction. However, the trial Court came to

the conclusion that consideration mentioned in the agreement to sell was received by the defendant. Consequently, the trial Court, vide its judgment and decree dated 30.03.2006, passed a decree for recovery of Rs.1,90,000/-, the consideration amount indicated in the agreement to sell with interest at the rate of 10% p.a., from the date of execution of agreement to sell dated 26.11.2002, till the date of actual payment.

Being aggrieved of the judgment and decree of the learned trial Court, defendant-appellant preferred an appeal in the Court of learned District Judge, Kapurthala. The learned District Judge upheld the findings of the trial Court on all the issues and at the same time reduced the rate of interest from 10% to 8% per annum.

I have heard the learned counsel for the appellant.

Learned counsel appearing for the defendant-appellant submits that since it was a loan transaction, it was not open to the learned Courts below to pass a decree for recovery in a suit for specific performance.

The contention of the learned counsel cannot be appreciated. Both the learned Courts below have concurrently held that the agreement in question was duly executed , though the intention of the parties was not to secure the sale of the property, but was kept as a security for return of the

loan. Under these circumstances, the learned Courts below have passed a decree for recovery. No substantial question of law is involved in this appeal. No merit. Dismissed with no order as to costs.

September 06, 2007. (PERMOD KOHLI)
BLS JUDGE